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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,207	09/28/2001	Anthony William Brassington	U 013543-1	8406

140 7590 10/01/2002

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NEW YORK, NY 10023

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/889,207

Applicant(s)

BRASSINGTON, ANTHONY
WILLIAM

Examiner

Stephen J. Castellano

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-23 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-13, 15-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

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Applicant's election of claims 6-13 and 15-23 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 14 has been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 8.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 10, 11 and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the prior art of Fig. 1 and page 1, lines 5-16 of the specification (the disclosed prior art).

Claims 6 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British reference No. ('363) to Jorger.

Claims 6 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British reference No. ('802) to Hancock.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 10-12, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the disclosed prior art in view of Hancock.

The disclosed prior art discloses the invention except for the rail being made of aluminum and the return section. Hancock teaches a top rail (at least partially defined by (clamping member 9)) having third portion (lip 20) having a return portion extending downwardly therefrom. It would have been obvious to add the return portion in order to provide a more secure connection to the top wall which will not slid. Aluminum is a well known structural material. It would have been obvious to modify the material of the metal rail to be aluminum when a strong yet lightweight material is desired in order to reduce weight.

Claims 6, 7, 10, 11, 13, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the disclosed prior art in view of Jorger.

The disclosed prior art discloses the invention except for the rail being made of aluminum and the first obtuse angle of between 140 – 160 degrees. Jorger teaches a top rail having a first obtuse angle between the first vertical portion and the angled second portion of approximately 140 – 160 degrees (the angle is definitely greater than 135 and definitely less than 170). It would have been obvious to modify the top rail to provide two inwardly concave and obtuse angles and to modify the angle to be between 140 – 160 degrees in order to provide a smooth transition from the side wall to the top wall. Aluminum is a well known structural material. It would have been obvious to modify the material of the metal rail to be aluminum when a strong yet lightweight material is desired in order to reduce weight.

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Claims 6-13, 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the disclosed prior art in view of Jorger as applied to claims 6, 7, 8, 10, 11 and 12 above, and further in view of Hancock.

The combination discloses the invention except for the return section. Hancock teaches a top rail (at least partially defined by (clamping member 9)) having third portion (lip 20) having a return portion extending downwardly therefrom. It would have been obvious to add the return portion in order to provide a more secure attachment to the top wall which will not slide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
September 24, 2002